

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
H. WARSHOW & SONS, INC., :  
 :  
 :  
 :  
 Plaintiff, : 07 Civ. 4611 (LLS)  
 :  
 -against- :  
 :  
 :  
 ROKA APPAREL PRODUCTS, LLC :  
 :  
 :  
 Defendant. :  
----- X

**AFFIDAVIT OF HENRY WARSHOW IN OPPOSITION TO DEFENDANT  
ROKA APPAREL PRODUCTS, LLC'S MOTION TO DISMISS, OR, IN THE  
ALTERNATIVE, TO STAY**

STATE OF NEW YORK     )  
                                  )     ss:  
COUNTY OF NEW YORK    )

Henry Warshow, being duly sworn, deposes and says:

1. My name is Henry Warshow. I am over eighteen years of age, am of sound mind and make the statements herein based on my personal knowledge.

2. I am the President of H. Warshow & Sons ("Warshow"), and in that capacity I have access to and knowledge of its books, records, and files, including the matters which give rise to this lawsuit. I have also reviewed the Affidavit of Larry Stone, submitted to the Court by Roka in this matter. The Affidavit of Larry Stone is annexed to the Declaration of Kenneth Schachter as Exhibit B.

3. During the period at issue, Warshow manufactured fabrics and textiles used for the production of clothing and other goods.

4. Warshow is incorporated in Delaware, and its principal place of business is located in New York, NY.

5. Warshow's officers and employees reside and work in and around the States of New York, Pennsylvania, and Virginia. None of its officers or employees reside or work in the State of Florida.

6. Warshow does not maintain in the State of Florida any business office, bank account, telephone listing, accounting books or records.

7. Warshow does not own, lease or maintain any real or personal property in the State of Florida.

8. Warshow has no agent in Florida and maintains no showroom in Florida.

9. I am personally familiar with the transactions and events upon which this dispute arises and would be a witness at a trial of this matter.

10. The transaction and events upon which this dispute arises were initiated by Roka Apparel Products, LLC ("Roka") in the State of New York.

11. Specifically, on or about March 3, April 6, April 12, November 2, 2004 and again on or about April 19, 2005, Roka's President, Larry Stone, visited Warshow's New York showroom to view our fabrics, and negotiate price, payment terms, fabric color, amount of fabric and delivery date. Following those meetings, I would contact Warshow's plant in Pennsylvania to provide the plant with order indication and initiate compliance with the order placed in New York.

12. In accordance with Roka's orders, the textiles were then shipped from Warshow's distribution facility in Pennsylvania to Roka's manufacturing facility in Honduras. None of the textiles were shipped to Florida.

13. As Mr. Stone confirms in his affidavit, the “sample purchase order” attached to his affidavit as Exhibit A is a document which was created and “issued” by Roka – not Warshow. See Affidavit of Larry Stone at ¶ 7.

14. While Roka’s purchase order may state “F.O.B. Jacksonville,” Warshow’s documents, which correspond to that very purchase order, explicitly state “F.O.B. Mill” and shipment to Honduras. See Warshow Order Confirmation, annexed hereto as Exhibit A, and Internal Order from Warshow’s New York Office to its Pennsylvania distribution facility, annexed hereto as Exhibit A.

15. The term “F.O.B. Jacksonville” in the Roka document represents its attempt to make Warshow responsible for freight costs at least as far as Jacksonville. Warshow, however, did not agree to this term and stated in its order confirmation, “F.O.B. Mill,” which meant Roka was responsible for freight from the point of shipment – Warshow’s mill in Pennsylvania. Roka accepted the goods under this term at its plant in Honduras.

16. In addition, Roka’s own purchase order specifically states that shipment is to be made to Honduras. The purchase order is also addressed from Honduras.

17. In summary, the textile fabrics at issue in this dispute were selected in New York, distributed from Pennsylvania, and shipped to Honduras.

18. Roka has twice acknowledged its debt to Warshow for the unpaid textiles in the amount of \$232,583.93 plus interest. See May 12, 2006 Letter from Warshow’s insurance carrier, annexed hereto as Exhibit B; see also July 25, 2006 facsimile from Roka to Warshow, annexed hereto as Exhibit C.

Henry Warshaw  
Henry Warshaw

Sworn to before me this  
17th day of July, 2006

Anthony Cardillo  
Notary Public

**ANTHONY CARDILLO**  
Notary Public, State of New York  
No. 034860234  
Qualified in Bronx County  
Commission Expires May 27, 2011

## **EXHIBIT “A”**

JUL-11-2007 11:26 FROM:

570 286 9756

TD: 12127046157

P.375

**H. WARSHOW & SONS, INC.**

PAGE: 1

DATE: 3/09/2005

N.Y. ORDER # 80 0043783 - 000

please use above # for all inquiries.

1375 BROADWAY, 23RD FLOOR • NEW YORK, NY 10018 • (212) 921-0200

F.O.B. MILL

R359455  
Customer Purchase Order NumberSOLD TO: ROKA APPAREL PRODUCTS, LLC  
SUITE 145  
9487 REGENCY SQUARE BLVD. N.  
JACKSONVILLE, FL

32225

SHIP TO: HONDURAS CUTTING  
HARLET HFC-2, ZOLI PARQUE IND  
VILLANUEVA BUILDING #8  
VILLANUEVA-C HONDURAS, C.A.

ATT:

Fold Here		CUSTOMER SORTMENT PO #		SALESMAN FREIDMAN ED	
SELLING STYLE:		FIBER CONTENT		TERMS: 30 PLUS 30	
07750 - 0083		BRT ANTRON		ROUTING: NEW PENN PREPAID	
TOTAL YARDS		LYCRA		THE PRICES QUOTED ON THIS ORDER	
3000.00000				CONFIRMATION ARE SUBJECT TO CHANGE	
				BASED ON RAW MATERIAL PRICE INCREASE	
WHITE PRICE: 0.00	COLOR PRICE: 0.00	PREMIUM PRICE: 7.750	FINISH CODE: 0067	OVERRIDE:	
Shipping Schedule		Week Ending 04/02/05		Usage Code	
		Yardage 3000.00		INT	
Specification		Sequence		Customer Code #	
Shade #	Description	Yardage			
44494	AUR RICH B	3000.00	3000.00	43253	
Special Instructions:					
4/2 is the submit date					

028 3/04/2005

ing 6573

CREDIT RECHECK

"WHALE"

GREIGE YARDS			FINISHED YARDS		
BALANCE	DYE ORDERS ISSUED	YARDS	BALANCE	SHIPPED	DATE
	82857		31-2 <sup>nd</sup>	1577	3/29
	82858		115-2 <sup>nd</sup>	1412	3/29
				2409	

CONVERTING COPY

## **EXHIBIT “B”**

TROUTMAN SANDERS

03/08/2007 17:08 21270460818  
MAY-12-2008 FRI 04:03 PM

EULER / ACI

FAX NO. 4107530942

P. 01

**EULER HERMES**  
ACI

May 12, 2006

Warsow, H & Sons Inc  
1375 Broadway 23rd Floor  
New York, NY 10018

Attention: Mohamed Hakeek

Re: Warsow, H & Sons Inc  
Claim No: 000327137  
Debtor: Roka Apparel Products LLC  
Your Account No: 3442  
Balance Due: 264,783.21 US\$

Dear Mr Hakeek:

- ☐ This will confirm your acceptance of \_\_\_\_\_ in full settlement.
- ☐ Please execute the attached where indicated and return ASAP.
- ☐ Enclosed letter received from attorney. Our file previously closed. Please correspond directly with attorney.
- ☐ The above account has been closed as withdrawn. Therefore, we are returning the enclosed.

Comments: Attached please find a copy of the general offer proposal from the debtor. Please note that the debtor currently list an amount owing your company of \$232,583.93. The debtor is offering a 37.5% payout under the offer. The attorney advised me that the debtor would waive the arbitration clause for discrepancies and will negotiate on an amount owing to you. Please execute the acceptance forms and return them directly to our attorney Gregory Foster, so that he can send the information directly to the debtor.

Sincerely,

James Mobley  
Claim Specialist II  
Euler Hermes ACIEuler Hermes ACI  
800 Red Brook Boulevard  
Owings Mills, MD 21117-1008  
Tel. 410-753-0763  
Fax: 410-753-0943  
www.eulerhermes.com



## **EXHIBIT “C”**

07/16/2006 03:41 1994725832d

RoKa

PAGE 01

9467 Regency Sq Blvd.  
Jacksonville, FL 32225**RoKa Apparel  
Products LLC****Fax**

<b>To:</b> Morris Kaplan	<b>From:</b> Karon Stone
<b>Fax:</b> 212-644-5704	<b>Pages:</b> 3
<b>Phone:</b>	<b>Date:</b> July 25, 2006
<b>Re:</b>	<b>cc:</b>

☐ Urgent   ☐ For Review   ☐ Please Comment   ☐ Please Reply   ☐ Please Recycle

• **Comments:** Mr. Kaplan,

I am sending a reconciliation of RoKa's AP to Warshaw's AR.

Please note that I have a statement of account from Warshaw clearly showing the \$33,000 wire being applied to the oldest invoices. You stated that it was applied to the three invoices which you added to the statement, but the wire was made on 6/10/06 and the invoices are dated much later. In any case, these invoices have been paid either by MAST or RoKa wire in September. All invoices dated after 6/30/05 were prepaid by RoKa or paid by MAST.

Thank you. Please contact me @ [kstone@rokaapparel.com](mailto:kstone@rokaapparel.com) if you need further information.

Karon Stone

87/16/2835 13:41 19847.56328

MLK01

F1196 04

## Reconciliation of RoKa AP to Warehouse AR

Balance per RoKa	\$	232,683.63
Chargeback	\$	4,762.80
Overpayment	\$	(80.45)
Overpayment	\$	(107.88)
Invoice 30519	\$	8,127.00
Invoice 31023	\$	4,685.67
Invoice 31024	\$	13,824.77
Intermark Inv. Difference	\$	1,057.77
Balance per Warehouse	\$	264,783.21

## EXPLANATIONS

We are researching this chargeback  
 I do not have information  
 I do not have information  
 This invoice was paid by MAST  
 This invoice was paid by RoKa's 8/25/05 wire of \$82,000  
 This invoice was paid by RoKa's 8/25/05 wire of \$32,000  
 This is the difference in the credit given for the shipment to Intermark

## ROKA DETAIL AP

11/19/2004	28532	\$	8,110.83
11/19/2004	28533	\$	32,508.25
11/19/2004	28534	\$	11,082.86
11/19/2004	28535	\$	10,481.80
11/19/2004	28536	\$	10,424.40
		\$	69,682.78
8/10/2005 WIRE		\$	(33,000.00)
Balance		\$	36,662.78
11/24/2004	28587	\$	15,178.88
11/24/2004	28588	\$	3,784.78
1/14/2005	29054	\$	7,886.08
1/14/2005	29055	\$	7,188.74
1/25/2005	29149	\$	271.85
1/27/2005	29170	\$	40.38
3/11/2005	29564	\$	8,072.56
3/29/2005	29708	\$	4,947.60
3/29/2005	29707	\$	23,184.75
4/29/2005	30046	\$	10,767.00
5/8/2005	30103	\$	11,581.80
5/8/2005	30104	\$	7,161.00
5/8/2005	30106	\$	10,795.80
5/8/2005	30108	\$	4,312.00
5/8/2005	30107	\$	8,843.00
5/13/2005	30181	\$	3,208.00
5/13/2005	30182	\$	10,435.60
5/13/2005	30183	\$	10,333.78
5/13/2005	30184	\$	3,458.00
5/13/2005	30185	\$	10,810.80
5/17/2005	30186	\$	59.27
5/18/2005	30225	\$	160.10
5/20/2005	30239	\$	163.03
5/20/2005	30240	\$	178.19
5/20/2005	30281	\$	3,490.50
5/20/2005	30252	\$	4,398.00
5/20/2005	30253	\$	1,207.88
5/20/2005	30254	\$	1,898.00
5/20/2005	30256	\$	5,442.10
5/20/2005	30258	\$	7,705.25
5/20/2005	30257	\$	8,440.00

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RUMH

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5/23/2006	30281	\$	180.10
5/28/2006	30295	\$	303.75
6/27/2006	30310	\$	3,385.20
6/6/2006	30373	\$	3,208.46
6/6/2006	30374	\$	14,037.10
6/6/2006	30375	\$	10,841.25
6/6/2006	30376	\$	7,117.25
6/6/2006	30377	\$	3,678.50
6/6/2006	30378	\$	13,104.00
6/6/2006	30379	\$	3,619.00
6/6/2006	30380	\$	9,016.00
6/10/2006	30420	\$	180.10
6/10/2006	30438	\$	7,591.50
6/10/2006	30439	\$	10,417.05
6/17/2006	30460	\$	3,888.80
6/17/2006	30500	\$	4,071.86
6/17/2006	30626	\$	25,224.80
6/17/2006	30627	\$	3,776.50
6/17/2006	30628	\$	7,345.25

CREDIT	\$	(128,511.77)
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BALANCE DUE	\$	232,582.33
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